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Subject: CT Stop the Pipeline Comments
Resent-From: Islandereast.Comments@noaa.gov
Date: Thu, 20 Nov 2003 14:29:54 EST
From: KKennedyMD@aol.com
To: IslanderEast.comments@noaa.gov

Please find attached the Final comments from CT Stop the Pipeline. Please advise immediately if you have any difficulties with this file.

Thank you so much for the opportunity to comment.

Respectfully submitted,
Katherine Kennedy, M.D.

CT STOP THE PIPELINE POST OFFICE BOX 578 BRANFORD CT 06405

November 20, 2003

The Office of the General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway
Silver Spring, MD
20910

RE: Islander East Pipeline Appeal

Dear Sir/Madame:

Thank you so much for giving the public an opportunity to comment on the Islander East Pipeline appeal. With this submission, CT Stop the Pipeline, would also like to extend our deep appreciation to the General Counsel at NOAA for taking the time to come to New Haven on November 5, 2003 and convene the public hearing. Thank you for your graciousness and assistance with our questions and concerns.

We have submitted other materials to you. In the following comment, we will describe why Islander East is not consistent with the objectives of the CZMA, why Islander East cannot be deemed “necessary in the interests of national security,” and therefore why we recommend that there can be no other action except to uphold the decision of the CT DEP and deny Islander East’s appeal. We will also address related additional concerns about this appeal in a separate section to follow.

I. Discussion of Consistency with the Objectives of the CZMA

As the Office of the General Counsel at NOAA has noted, each of the following three requirements must be met for a project to be found consistent with the CZMA.

REQUIREMENT 1:

As described in NOAA's materials provided at the November 5 public hearing "the activity furthers the national interest as articulated in sections 302 or 303 of the CZMA in a significant or substantial manner."

According to CZMA § 1451 Congressional findings (Section 302) national interest is defined as follows: "There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." This appears to be the primary purpose of the CZMA.

The next section describes the "rich resources" of the coastal zone including "a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation" and then describes the destruction of coastline because of a variety of "demands" and notes that the coastline is "extremely vulnerable to destruction by man's alterations."

Congress further finds that "important ecological, cultural, historic, and esthetic values in the coastal zone which are *essential to the well-being of all citizens* [italics mine] are being irretrievably damaged or lost" and that the foundation of the CZMA is built on this notion of a "need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters" because "*special natural and scenic characteristics are being damaged by ill-planned development* [italics mine] that threatens these values."

Clearly, Congress is using powerful and evocative language to underscore the primary intent of the CZMA: *to stop coastal projects that are “ill-planned” because there is an understanding that “man’s alterations” can cause irretrievable loss of our “vulnerable” yet “rich” coastal resources which are “essential to the well-being of all citizens.”*

This speaks directly to the Islander East appeal at hand. The Islander East Pipeline is an example of the worst way to plan a project and completely fits Congress’ descriptor of “ill-planned development.” By their own admission at the Branford Blue Ribbon Hearings in October 2001, Islander East simply looked at a map of the state of Connecticut and drew a line along the Railroad track that belongs to the Branford Steam Railroad. Once this route had been set by Islander East, there was only a cursory analysis of alternative routes, as demonstrated by the dearth of data presented to every state, local and federal agency since the inception of this pipeline project.

For example, in their June 17, 2002 comments to the Federal Energy Regulatory Commission (FERC) on the Draft Environmental Impact Statement (DEIS) for Islander East, the U.S. Army Corps of Engineers (U.S. ACOE) stated that the DEIS “does not contain sufficient information to make a reasonable determination” and that the DEIS “fails to adequately compare the environmental impacts of system alternatives to” Islander East. Since the FERC reports that the majority of data collected for the DEIS was obtained from Islander East, these criticisms from the U.S. ACOE would seem directed at Islander East rather than the FERC staff. (This June 17, 2002 letter from the U.S. ACOE will be submitted to NOAA separately for reference.)

In another example, in a September 30, 2002 letter to FERC on the Final EIS for Islander East, Region I EPA Administrator Robert Varney harshly critiqued the FEIS: “the FEIS lacks the detailed information necessary to understand the direct, indirect and secondary impacts to wetlands and waters of the United States associated with the proposed project.” In sum, the full environmental impacts from Islander East in the FEIS have been inadequately characterized. The EPA letter goes further to suggest that these impacts are far worse than “limited adverse” when, highlighted in boldface, is the following criticism of Islander East’s FEIS: “The EPA cannot agree with...the FEIS which concludes that the construction and operation of the Islander East Pipeline Project would result in limited adverse environmental impacts.” The EPA then lists the impacted areas -- 3100 acres of Long Island Sound, 125.5 acres of forested habitat, 83.1 acres of open lands and 3.1 miles of wetland crossings – and follows with four pages of significant questions, overlooked in the FEIS, that still require rigorous analysis. These questions posed by the EPA still remain unanswered today by Islander East. (The EPA letter of September 30, 2002 will also be submitted to the NOAA record for reference.)

Further calls to answer these questions or to perform additional studies by the U.S. ACOE, the CT DEP and the Branford Blue Ribbon Committee – for example, an accurate modeling of sediment dispersal or the creation of an alternate plan should the HDD fail – have been met with responses like “we are working on that.” Still today, more than two years later, little additional data and few answers have been forthcoming from Islander East.

This evasiveness by Islander East makes a mockery of the permitting system and wastes both regulators time and taxpayer's money. Why should any government agency have to make repeated calls for information from the applicant?

We can think of only two rationales for this unprofessional behavior by Islander East: Either Islander East believes that they do not need to spend the time or the money to do the proper studies OR Islander East has actually done the studies and faced with data that is unfavorable to their project, Islander East has intentionally withheld the data. Which rationale is it? Is it the seeming arrogance that Islander East does not need to provide the data? Or is it simply -- deception? Either of these positions is untenable and should be enough to deny Islander East's appeal based purely on their consistent unresponsiveness which borders on unprofessional operating procedures.

Despite whatever method was used to arrive at the present situation, this fact remains undisputed: Islander East is an ill-conceived and poorly planned project. Islander East is precisely the kind of project that Congress had in mind when the CZMA was signed into law and Islander East is exactly the kind of project that the CZMA is designed to stop.

As we reconsider the intent of the CZMA: *to stop coastal projects that are "ill-planned" because there is an understanding that "man's alterations" can cause irretrievable loss of our "vulnerable" yet "rich" coastal resources which are "essential to the well-being of all citizens,"* we move onto the next phrase, "that "man's alterations" can cause irretrievable loss of our "vulnerable" yet "rich" coastal resources.

There can be no doubt that Islander East, as a version of "man's alterations," will cause irretrievable losses to the indisputably "vulnerable" yet "rich" coastal resource of Long

Island Sound. The irretrievable losses have been identified over and over again in documents submitted to NOAA. Even the FEIS – flawed by its underreporting of adverse impacts -- acknowledges that there will be “adverse long-term and permanent” damage to Long Island Sound’s seafloor and destruction of epifauna/infauna species and habitat (see FEIS page 5-9). The U.S. EPA listed in their September 2002 letter the areas impacted; the CT DEP has done a more thorough analysis and has concluded that this destruction is severe and permanent.

In their denial of CZMA coastal consistency, the CT DEP stated: “The proposed project will degrade water quality through the significant introduction of suspended solids; and degrade, irrevocably alter and permanently destroy essential fish habitat through alteration of the benthic environment. The siting of the non-water dependent pipeline through prime shellfish habitat would cause a permanent adverse impact to a water-dependent use by displacing a water-dependent use, shellfishing, with a non-water dependent use, natural gas transmission. Also, the proposed project will adversely impact tidal wetlands.”

And we even have proof, from the sad events following the construction of Iroquois’ cross-Sound pipeline in 1991, that shellfish beds are extraordinarily sensitive and “vulnerable.” Once disturbed, they do not recover.

Thus, we know from both experience and expert testimony that Islander East will undeniably and permanently destroy areas of Long Island Sound seafloor, hundreds of acres of valuable and productive shellfish beds and delicate coastal wetlands. This is a perfect example of “man’s alteration” creating an “irretrievable loss.”

Furthermore, we know that Long Island Sound is “vulnerable.” We have only to look at the western end of the Sound where, especially from July through September, there are periods of anoxia, primarily from excess nitrogen and eutrophication processes, that directly contribute to finfish and shellfish mortality, especially for juvenile and larval forms. We also know that this was far worse in the mid-1980’s until efforts to decrease nitrogen point-source pollution came into effect and both federal and state funding was finally provided for the restoration of Long Island Sound, along with the 1987 federal designation of “An Estuary of National Significance.” Since that time, Long Island Sound has become healthier with less days of anoxia/hypoxia recorded as well as other markers of improvement, e.g. harbor and gray seal populations have begun to return to more western haul-out sites in the winter months, including the Thimble Islands (as noted in reports from the Norwalk Maritime Museum listed in the U.S. ACOE August 5 record.)

In order to understand the implications of the appeal set forth by Islander East, it is important to recognize and understand the recent history of efforts around the restoration of Long Island Sound.

In 1985, the U.S. EPA, together with Connecticut and New York, began the Long Island Sound Study. In 1988, government agencies, nonprofit organizations and the public convened in a Management Conference and after 6 years of efforts, came out with the “Comprehensive Conservation and Management Plan (CCMP) for Long Island Sound” which was adopted in 1994 by Connecticut and New York. The CCMP prioritized the six problems compromising the health of Long Island Sound: (1) hypoxia (2) toxic contamination, (3) pathogen contamination, (4) floatable debris, (5) the overall

health of living organisms and (6) land use/development resulting in habitat loss and water quality degradation.

According to the EPA's website, www.epa.gov/region01/eco/lis, the CCMP "identifies specific commitments and recommendations for action [and] calls for a sustained and cooperative effort among the states of Connecticut and New York, the EPA and other federal agencies, local governments, and the private sector." Moreover, the CCMP states that "the fate of the Sound depends on more than just the commitments of government agencies and regulated entities; it depends on the will and desire of the people of the region."

Last year, on December 4, 2002, state environmental leaders from Connecticut and New York, together with EPA Administrators from Region 1 and 2 came together to sign the 2003 Long Island Sound Agreement. The U.S. EPA pledged \$4 million to continue restoration efforts in Long Island Sound and presented New York and Connecticut with \$2 million at the signing.

The 2003 Long Island Sound Agreement set the goal of 2014 as the date by which "the health of the Sound would be restored." Furthermore, "by this Agreement, we recommit ourselves and challenge others to work to attain the goals of the CCMP and to make Long Island Sound's waters cleaner and healthier, its living sources more abundant and diverse, and its economic and recreational worth to the region even more valuable." The Agreement set 30 specific goals, including efforts to improve water quality by reducing hypoxia, bacteria and toxins, restoration of vital fish habitat and valuable watershed lands, and the promotion of public awareness of the Sound. The Agreement acknowledged that meeting these goals by 2014 "will be a challenge requiring the

engagement of everyone – federal, state, interstate, and local businesses, schools and universities, and citizens – around the Sound.”

Both the original CCMP and the recent 2003 Agreement call for all of us – government agencies, corporate America, the nonprofit sector and private citizens – to work together to realize these goals.

This digression into the history of Long Island Sound is to underscore both its vulnerability as well the efforts and money that have been poured into its restoration and preservation. As noted before, the Sound is responding to these efforts, although it remains fragile and “vulnerable.” It is ill-considered, in terms of time, money and effort to take any new steps backward. Furthermore, the 2003 Agreement is a call to NOAA and every government agency (“a challenge requiring the engagement of everyone”) involved in the Sound – especially now in 2003 -- to prioritize the needs of the Sound over other needs in order to make the goal of 2014. Please take the spirit of the 2003 Agreement into consideration as you consider this appeal.

We now consider the also undisputed fact that Long Island Sound is a “rich” coastal resource, for esthetic, recreational/tourism, environmental and economic reasons. According to Connecticut realtors, homes with views of the Sound are priced 50% to 200% higher (depending on the view and proximity) than comparable homes in adjacent neighborhoods. In the Thimble Islands specifically, a real estate transaction of over \$21 million was recorded earlier this year for an island with a single primary residence. Thus, one way that the esthetic value of the Sound can be quantified is by this quite expensive real estate.

The Sound – specifically the Branford area and the Thimble Islands through which Islander East has proposed its route -- offer incredible opportunities for recreation, from boating, sailing, kayaking, swimming, windsurfing, parasailing and sightseeing aboard two area commercial tourboats to beautiful coastal walks through marshes and along beaches. This particular area of coastal Connecticut – the Thimble Islands and the Stony Creek/Pine Orchard area -- is a summertime haven for many tourists from upstate Connecticut, New England and New York. This area is prized for its natural beauty and easy lifestyle. I have included the web addresses from Bob Milnes's Tour Boat website to demonstrate the exquisite and unique beauty of this area; please take a look:

<http://www.thimbleislands.com/thimbles.html>

<http://www.thimbleislands.com/images/arial2.jpg>

<http://www.thimbleislands.com/images/Aerial%20islands.JPG>

http://www.thimbleislands.com/images/Extons_Reef.JPG

<http://www.thimbleislands.com/images/Jepson.JPG>

http://www.thimbleislands.com/images/Grey_rock.JPG

<http://www.thimbleislands.com/images/Horse.JPG>

http://www.thimbleislands.com/images/Public_Dock.JPG

<http://www.thimbleislands.com/images/CaptKidd%20cove.JPG>

Islander East has claimed that the Thimble Islands are “not unusually ecologically sensitive areas of importance.” This is absolutely wrong. The Thimble Islands are beautiful and unique. There is nothing like them in the rest of Long Island Sound. Two of the islands are set aside for research and preservation purposes: Outer Island is the Stewart McKinney Preserve and Horse Island is a research station for Yale University.

From an ecological view, NOAA is certainly aware of the environmental value of coastal wetlands, Long Island Sound and the preservation of large areas of open space. In sum, the coastal wetlands are a nursery for juvenile and larval shellfish; in Connecticut, wetlands are being consistently lost each year with restoration projects unable to keep pace. Connecticut cannot afford to lose any additional wetlands, especially in the area of the Thimble Islands.

In addition, Islander East would cross numerous Branford Land Trust properties (please note the submissions of the Branford Land Trust) and this would break up large parcels of open space into smaller ones as well as irreparably alter the habitat along the pipeline's route. Branford has been fairly developed and open space parcels of this size cannot be replaced. The loss of this amount of open space would irretrievably harm essential habitat for many species of migratory and local birds (please note submission of National Audubon at the November 5 Public Hearing) as well as for local wildlife and plant species (in addition, invasive species would gain more habitat.)

Most importantly, Long Island Sound is a spawning ground and nursery for many juvenile forms of Atlantic finfish; since so many finfish species have been depleted by overfishing, we cannot contribute yet another human factor in the decrease in species of fish in our oceans.

Finally, Long Island Sound is an important economic resource. Besides increasing the value of waterfront real estate which translates directly into higher property taxes, Long Island Sound is home to an extremely profitable multimillion dollar shellfishing industry that has been highly rated on recent years. An example of just how profitable this industry can be is illustrated by the contract that Islander East signed with a local

shellfisherman, Nick Crismale, last year: Islander East would pay Mr. Crismale and his partner \$1.9 million for a little more than 7 acres of shellfish grounds through which the pipeline would directly cross. This could be construed to mean that each acre of productive shellfish bed should be valued at \$250,000 and that Mr. Crismale's total holdings of upwards of 300 acres are worth \$75,000,000. That value suggests that shellfish beds in the Thimble Islands are extraordinarily valuable.

Thus, we can see that the Long Island Sound area in and around the Thimble Islands and Branford is indeed a tremendous resource of a variety of riches; maintaining those riches is clearly in the national interest.

We are almost finished discussing Congress' intent of the CZMA. Now we have arrived at the final phrase: "essential to the well-being of all citizens."

This part is critical. All citizens need the riches of our coastal resources, and in this instance, the riches of the Thimble Islands and Long Island Sound. In fact, Congress has suggested that, in this case, the Thimble Islands and Long Island Sound's preservation is "essential" for the "well-being" of our U.S. citizenry.

Islander East benefits very few – clearly the primary beneficiaries are the shareholders, employees and, for a scant few months, the construction workers. Less clear is whether the people of Long Island truly benefit: There are serious questions about the actual state of Long Island's energy needs and Islander East's precedent agreements (discussed in a later section of this letter) as well as concerns about the impact of rate increases for Long Island ratepayers (who will have to eventually bear the burden of construction costs of Islander East through rate increases even if the need for Islander East is in question.)

However, NOT constructing Islander East along this route would benefit the thousands of Connecticut citizens who signed the petitions in 2001 (5577 – turned in at the November 5 hearing) and the over two thousand people who signed postcards (turned into the hearing) in only a 14 hour time frame on November 4, 2003, the day before the hearing. But those thousands are only a small percentage of those who would benefit from NOT having Islander East constructed: our children and grandchildren who will inherit a cleaner Sound, valuable shellfish beds and more coastal wetlands.

Thus, it is clear from the discussion above that Congress' intent in 1972 was “*to stop coastal projects that are “ill-planned” [Islander East] because there is an understanding that “man’s alterations” [Islander East] can cause irretrievable loss of our “vulnerable” yet “rich” coastal resources [Long Island Sound] which are “essential to the well-being of all citizens*[for our generation now and in the future].”

In the next section, Congress expands on the role of state and federal agencies: the federal government should help the states to protect their local coastal resources. “In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate [and] the key to more effective protection and use of the land and water resources of the coastal zone is to *encourage the states to exercise their full authority over the lands and waters in the coastal zone* [italics mine] by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.”

Thus, Congress' intent for NOAA's role could be seen as holding the states to an even higher standard of coastal resource protection rather than overruling a state's intent to protect those coastal resources as is the case with the Islander East appeal before you now.

The next section of CZMA 302 deal with concerns about compensation to states for offshore drilling operations that harm their coastal resources (in 1972, Congress was quite concerned about offshore drilling especially California and specifically, Santa Barbara; this section reads as follows: "the national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.") Here in this clause, the CZMA defines only those energy projects that are actually derived from coastal resources – like subsea oil beds – as deserving to supercede the national interest of coastal preservation. Islander East's pipeline will not be literally produced from the seafloor of Long Island Sound. Therefore, this clause has little relevance to Islander East since no mining or drilling for fossil fuels is anticipated in Long Island Sound.

The next section is about "land uses in the coastal zone" and the impacts of pollution from those lands on coastal resources; Congress even emphasizes that "efforts to control coastal water pollution from land use activities must be improved." This has direct relevance to Islander East since there are many concerns about the potential for soil contaminants – from potentially toxic chemicals that have leached out of the railroad ties, especially in the early 20th century -- adjacent to the Branford Steam Railroad/Tilcon; when this soil is disturbed, the potential toxins could gain access to adjacent coastal

wetlands with harmful effects. Unfortunately, despite repeated requests, there has been no soil testing for toxins and contaminants in the area of the Branford Steam Railroad/Tilcon and so no real data is available.

Global warming concerns (taken as fact in 1972) are addressed, but this has little relevance to Islander East; next, issues relating to ocean resources are covered; this has been partially addressed through the discussion of the 2003 Long Island Sound Agreement. This speaks to the concern that ocean resources are considered when the CZMA is used; clearly, because Long Island Sound is an estuary, critical to spawning and development for many species of ocean finfish, maintaining its seafloor integrity and working to improve water quality are in the national interest; Islander East runs absolutely contrary to that national interest.

In summing up this evaluation of Section 302 of the CZMA, there is absolutely no evidence that Islander East furthers the national interest in any conceivable way. In fact, in most instances of Section 302, Islander East runs completely counter to the national interest. In balance, the national interest to protect the “vulnerable” and “rich” resource of Long Island Sound far outweighs any financial corporate interests that Islander East might, at best, have.

Moving to § 1452, Congressional declaration of policy (Section 303), I am including this section in its entirety in order to underscore that there is no item within Section 303 where there is even a suggestion that a pipeline project like Islander East might be a policy consideration.

“The Congress finds and declares that it is the national policy

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development, which programs should at least provide for--

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,

(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,

(D) priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(E) public access to the coasts for recreation purposes,

(F) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(G) the coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources,

(H) continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking,

(J) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control

and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies, and

(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title;

(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.

In fact, in Item 2 (D), there is language about “priority given to coastal-dependent uses.” Clearly, the Islander East Pipeline is not a coastal-dependent use like shell-fishing; pipelines can be laid anywhere in the ground – or even in the air! But shellfishing can only take place under certain controlled conditions within coastal waters.

Item 2 (D) also states that the national interest should include “orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such

development already exists.” The Thimble Islands and adjacent shellfish beds are pristine, untouched areas. The Branford Steam Railroad and Tilcon’s port were grandfathered into an area that is composed of primarily private residences, farmland or protected open space. This is not an industrial area. Islander East’s decision to site their pipeline here was neither “orderly” – Islander East used very little data in their initial siting process -- nor mindful of the area’s non-industrial composition.

Moreover, the FERC, in their decision to not evaluate the Iroquois’ ELI proposal in tandem with the Islander East Pipeline, as formally requested in briefs filed by the CT Attorney General’s office and letters of request by Connecticut’s federal congressional delegation and CT DEP Commissioner Arthur Rocque, proceeded heedless of the national policy of the CZMA. “Orderly” would have meant that FERC compared these two pipeline proposals and certified only the route that caused the least environmental harm to Connecticut’s coast; that would have been more consistent with CZMA national policy.

In sum, when the definitions of national interest are used from Sections 302 and 303 from the CZMA, there can be NO CASE that Islander East furthers the national interest in any possible way. In fact, the CZMA appears to have been specifically designed to stop the type of ill-conceived and environmentally harmful project that Islander East represents. Moreover, the intent of Congress appears to hold the federal government to a higher standard of coastal protection than expected from the states.

Therefore, Requirement (1) cannot be met.

REQUIREMENT 2:

This requirement states that “the national interest furthered by the activity outweighs the activity’s adverse coastal effects, when those effects are considered separately or cumulatively.”

Since there is no national interest defined by Sections 302 and 303, it is unnecessary to even balance the pipeline’s interests with the adverse coastal effects. Islander East provides no national interest as defined by the CZMA for this balance. The adverse coastal impacts are clearly greater.

However, for the sake of argument, if one were to look outside the CZMA definitions of “national interest” and use FERC’s definition of public need provided for in their Certificate, there still remains little compelling evidence to suggest that any national interests derived from Islander East’s “needs” outweigh the adverse coastal impacts posed by Islander East.

This is because there has been considerable change in the Long Island energy market scenario since Islander East first made its application to FERC in June 2001.

In fact, there was considerable change in the 15 months between June 2001 and September 2002, when FERC awarded Islander East with its Final Certificate. However, Islander East did not update FERC, and since FERC relied solely on Islander East’s report when they issued the Certificate, FERC did not account for these changes at the time of the issuance of their Final Certificate.

Since its application, Islander East has never updated any government agency with either the changes in the status of the corporations with which it holds precedent

agreements or with changes to the CURRENT energy market on Long Island; both have changed, possibly substantially.

At the time of its application in June 2001, Islander East reported that it had four precedent agreements to justify the construction of its pipeline. Of these four precedent agreements (which are nonbinding), two were with merchant power plants, AES Endeavour and Brookhaven Energy and the other two were with gas distribution systems, KeySpan Energy Delivery Long Island (KEDLI) and KeySpan Energy Delivery New York (KEDNY).

However, since June 2001, the status of those precedent agreements has changed:

- AES Endeavour has not even begun the New York State power plant permitting process and indeed, has not acquired a site. There is essentially no chance that AES Endeavour will ever be built; despite this fact, Islander East has not withdrawn AES Endeavour as a valid future customer.
- Brookhaven Energy has reported that it has alternate sources of gas available through an existing KeySpan lateral and, according to e-mail correspondence from Brookhaven Energy Vice President Charlebois, Brookhaven Energy “is not dependent on Islander East.” Moreover, the status of Brookhaven has been impacted by this fall’s recent RFP put out by the Long Island Power Authority (LIPA): Brookhaven Energy may team up with a proposed KeySpan power plant in order to win the RFP (KeySpan Energy needs Brookhaven Energy apparently because LIPA has concerns about KeySpan Energy’s potential monopoly of power plants on

Long Island – KeySpan Energy controls 80% of Long Island power plants) and this may also reflect a change in Brookhaven Energy’s source for gas (i.e. through the already existing Iroquois and interconnecting KeySpan system rather than Islander East) – since Brookhaven Energy would not respond to a RFP and structure a deal with another power plant if it was solely relying on Islander East, which Brookhaven Energy knows may not be built. This issue – whether Brookhaven Energy needs Islander East or whether Brookhaven Energy can be built and produce power WITHOUT Islander East -- needs to be better clarified (especially since Islander East filed with NOAA in their February 2003 Initial Brief a September 2002 letter from Brookhaven Energy to FERC: Brookhaven cites the “need for dependable supplies” of natural gas and requests that no alternatives be offered to Islander East’s proposed route. The fact is that Brookhaven Energy’s situation has very likely changed since that September 2002 letter.) Unfortunately, we do not have access to documents within LIPA, and so cannot provide supporting documentation; however, we urge the NOAA General Counsel, as part of the assessment of Islander East’s actual “needs” for the sake of a truthful evaluation of any possible “national interest” to fully evaluate and ascertain the current status of Brookhaven Energy, instead of relying on the potentially outdated information provided by Islander East. We are concerned, given the example of AES Endeavour, in which Islander East still reports that it plans to transport gas to AES Endeavour, a power plant

that will likely never be built, that Islander East is either unmotivated to provide accurate, updated facts or simply slipshod in their approach; neither method bodes well for a company planning to construct a high pressure gas pipeline.

- The other two precedent agreements are with KEDLI and KEDNY. In all likelihood, these are the only bonafide contracts that Islander East has.

These are problematic for two reasons:

- First, since KEDLI and KEDNY are subsidiaries of KeySpan Energy and since KeySpan Energy is a 50% co-investor in Islander East, the impression is that this will contribute to a potential monopoly by KeySpan Energy of the gas distribution system on Long Island; and since KeySpan Energy has been critiqued by LIPA for its 80% monopoly of Long Island energy generation, the specter of monopoly by KeySpan Energy on Long Island is real and should be a worrisome concern for not just LIPA, but for NOAA and the Department of Commerce as well.
- Second, KEDNY provides natural gas to New York City; this raises an important question: why does the gas need to cross Long Island Sound onto the Eastern end of Long Island in order to be transported down Long Island to New York City? This makes even less sense in the light of the downgrading of estimates of natural gas reserves in the Scotian shelf and Sable Island (downgraded to as low as 1.9 TCF by some reports; there are also concerns that

current engineering technology may not be able to get at reserves 10,000 feet below sea level, for example, the Deep Panuke.)

Therefore, much of the natural gas that Islander East transports may not originate from the Sable Island area; it may come from the Gulf area (and therefore could be brought into New York City from existing infrastructure to the west of New York City) or from Western Canada, where gas would be transported by Iroquois; since additional capacity presently exists on Iroquois' cross-Sound portion and, with Iroquois' new pipeline extension feeding directly into New York City, it makes little sense to move the gas at the Brookfield interconnection – where Iroquois and Islander East interconnect and where Iroquois has been providing gas to Islander East on a contractual basis for years -- first to Algonquin and then to Islander East. Why do additional pipeline and compression facilities that are redundant at best and environmentally harmful at worst, need to be constructed in order to get gas in some circuitous, convoluted way -- from either the Gulf or from Western Canada -- to the proposed Islander East pipeline? Furthermore, the addition of redundant pipeline makes poor financial sense for the ratepayers on Long Island who would have to pay for this additional unnecessary and redundant infrastructure. The only sense it makes is for Islander East's financial interests since primarily Islander

East will financially profit from this potential pipeline pretzeling arrangement.

- Furthermore, once Islander East's gas gets to Long Island, we understand that gas that is currently in KEDLI's system on Long Island will need to be DISPLACED in order to create capacity for Islander East's gas to get to New York City; unfortunately, since all pipeline maps have been removed from the public domain since September 11, we cannot verify this; however, yet again, we implore NOAA to strive to ascertain the truth; we ask that NOAA evaluate this possibility and if indeed, if gas will be displaced, please let this data underscore our contention that the Islander East Pipeline appears to be more about increasing Islander East's share of the lucrative Long Island market than about meeting Long Island's real energy needs.
- A third concern is that Islander East has not accounted for negative changes in Long Island's energy market since the trauma of September 11 and the recent economic downturn.
- Finally, Iroquois put on hold their ELI pipeline proposal in February 2003, even though they had received a Preliminary Determination from the FERC, had little opposition and would have likely received their Final Certificate from FERC. Their reason was that "the market [on Long Island] had failed to materialize." This dramatically suggests that Islander East has inflated their assessment of Long Island's energy needs.

In sum, a realistic review of Long Island's energy markets is required; until the truth about Long Island's energy markets is determined – hopefully by your office -- it will be very difficult to divine the truth about the “need” for the Islander East Pipeline. Moreover, it appears that Long Island's energy markets appear to be devising alternative methods for meeting natural gas needs in the event that Islander East does not get built.

Since Islander East's “need” is unclear, but, at the very least, is LESS than at the time of the FERC Certificate in September 2002 (AES Endeavour should be eliminated which leaves Islander East with, at most, only 3 precedent agreements) and, if Brookhaven Energy should also be removed, then the “need” for Islander East would have substantially diminished.

Since the burden of evidence is on Islander East to demonstrate cause for this appeal, we respectfully ask NOAA to require that Islander East show updated proof that Islander East, if built, still has the same “need” as the time of the FERC Certificate and, if built, will transport gas to all four of these customers.

Islander East has also introduced the concept of “reliability” of cross-Sound pipelines as a “national interest:”

- First, this is not defined by the CZMA as a rationale to destroy coastal resources; only energy-related projects PRODUCED by the coastal resources themselves supercede the destruction of these resources.
- Second, Islander East only recently introduced this vague concept of reliability recently; reliability as a purpose for Islander East was never part of their application to the FERC: the single purpose for Islander East according to FERC in the FEIS was to “provide 285 dekatherms per day

of natural gas to energy markets in Connecticut, Long Island and New York City.” This purpose never included the vague and poorly defined concept of reliability.

- Third, even if the above is overlooked, Islander East is only 50 miles long and provides only regional interconnections; it does not carry natural gas from the site of production. If Islander East were to transport gas from a site of production, there could be some concern for reliability because obviously, if that service were disrupted, significant problems could ensue. However, there are many compensatory pipeline interconnections to the Connecticut and New York natural gas markets that could compensate for any disruptive events.
- Fourth, there are other pipelines that are hundreds of miles longer and transport from or near the site of production of natural gas and have no redundant pipelines for added reliability. For example, the Maritimes pipeline, owned by Duke Energy, runs through Maine for hundreds of miles. If the Maritimes pipeline experienced a disruption, the fallout would be great; reliability is a valid concern there. With Islander East, because of its short length and the region’s compensatory pipeline interconnections, reliability is reduced to a far lesser concern and certainly is not great enough to warrant the permanent coastal resources destruction.
- Fifth, reliability is a far greater concern for the aging Algonquin Pipeline, also owned by Duke Energy, which runs through Connecticut and would feed Islander East. According to its website, Duke Energy just

“celebrated” the 50th birthday of the Algonquin Pipeline. Because of its advanced age, the Algonquin pipeline at far greater risk of experiencing a disruption in service than any newer pipeline (for example, the 1991 Iroquois, which is apparently made with thicker gauge steel and encased in cement at places and built to withstand substantially higher pressure than Algonquin.) It makes little sense to propose that reliability will be advanced by adding new pipe (Islander East) to such an old, even antiquated, pipeline (Algonquin). In fact, reliability might even be decreased eventually if Long Island becomes overly dependent on Islander East and Algonquin is disrupted or fails.

- Sixth, since the purpose of Islander East is to provide gas to Connecticut (although, ironically, there are no precedent agreements in Connecticut), Long Island and New York City, reliability could be enhanced by alternative methods to Islander East at each energy market locale. Other strategies to enhance reliability could be implemented without effecting permanent destruction of these specific coastal resources.

Finally, the August 2003 Blackout was caused by errors at Ohio's FirstEnergy (a November 19, 2003 AP story to document this is included later in this comment.)

Clearly, the facts demonstrate that Islander East's pipeline would have made little difference to the chain of events contributing to that massive power failure. Therefore, any arguments made by Islander East about Blackout prevention should be excluded from consideration in this appeal.

Islander East has also introduced the argument of cleaner air (as a result of the cleaner-burning natural gas transported by their pipeline) as a national interest. Obviously, clean air is in the U.S. national interest. However, the specific siting of the Islander East pipeline along this particular route bears absolutely no relevance to any improvement in air quality. Anywhere this pipeline is sited, gas is transported and burned, improvement to air quality will be exactly the same. Cleaner air is NOT contingent on this specific coastal route. Therefore, destroying these specific coastal resources for air quality improvements that could be achieved through any pipeline route makes little sense; clearly the national interest is furthered by preserving these coastal resources and rerouting Islander East.

In sum, Islander East's customer base on Long Island has decreased while the potential adverse coastal impacts remain permanent, severe and unchanged. The national interest of the United States will suffer from the permanent loss of these specific coastal resources; destroying these coastal resources for a capricious and ever-changing energy market makes little sense. Therefore, the national interest to protect these coastal resources vastly outweighs any national interest derived from moving gas to this variable and inconstant energy market.

Furthermore, any national interest relating to reliability, Blackout prevention and cleaner air are specious and entirely irrelevant arguments and should receive no consideration in this appeal.

Therefore, Requirement (2) cannot be met.

REQUIREMENT 3

This requirement states: “there is a reasonable alternative available that would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.”

There are many “reasonable” cross-Sound and non-cross-Sound alternatives that would be consistent with the CZMA.

For the record, CT Stop the Pipeline is opposed to all cross-Sound pipelines; however, we would stop our opposition against any less environmentally harmful alternative cross-Sound route, such as the ELI System Alternative, in order to create a compromise and prevent the extraordinary and cavalier destruction of these specific coastal resources before us in this appeal.

Frankly, we fail to understand why Islander East is so unwilling to compromise and has dragged out this appeal in this fashion. In October 2002, when the CT DEP denied coastal consistency, Commissioner Rocque invited Islander East to discuss alternative routes to the present route. Islander East appears to have refused to consider any other routes. This baffles us. If Islander East wanted to meet its in-service dates, then why not compromise? If Islander East had compromised and worked with the CT DEP last year, an alternative route might have already been permitted, or even under construction by now. Instead, Islander East has refused to compromise and has spent taxpayer’s money and government agency officials’ time in order to press for this specific route and this route only.

Why? Our only answer is money. Islander East wants their own pipeline all the way from the middle of Connecticut to Long Island; they do not want to share a pipeline

with Iroquois for any distance, even though they interconnect at Brookhaven and Iroquois has been supplying Algonquin with gas on a contractual basis for years. Should Islander East's profit margin be boosted by the construction of the pipeline their way with the resultant destruction of our coastal resources? We think that is neither fair nor ethical nor keeping in the U.S. national interest.

Several agencies, including the U.S. ACOE and EPA Region 1 have commented that the original alternatives analysis in the DEIS was incomplete and that an environmentally less harmful alternative exists.

In their June 17, 2002 letter, the U.S. ACOE stated: "although incomplete, [the DEIS] appears to suggest that the Eastern Long Island (ELI) system alternative would be practicable, shorter in length (both onshore and offshore), cross fewer streams, avoid designated shellfish beds, affect fewer residences, and minimize trenching in the nearshore environment. Consequently, the ELI alternative, as presented in the DEIS, appears to meet the stated project purpose and need while discernibly reducing potential adverse impact to the aquatic environment."

In their September 30, 2002 letter, EPA suggested that FERC acted prematurely with the rapid approval of Islander East less than 30 days after the issuance of the FEIS. "The approval comes almost two weeks in advance of the end of the typical thirty day wait period on the FEIS. As a result, the comments that EPA and other parties are making on the FEIS regrettably were not considered as part of the FERC decision on September 18, 2002." The EPA also suggested that FERC had not adequately addressed an analysis of alternatives: "Unfortunately, because FERC's decision has already been made, the issues that remain unresolved, such as the analysis of alternatives, will need to be

addressed by the Clean Water Act Section 404 process administered by the Army Corps of Engineers. That process will determine whether the ELI alternative, the Islander East alternative, or others are permissible under the Clean Water Act.” Finally, the EPA called into question FERC’s rationale for disregarding the ELI system alternative since the FEIS (prepared by FERC staff) found the ELI system alternative to be “environmentally preferable” to the Islander East route. The EPA appeared unable to fathom why FERC ignored this data: “It is not clear, however, why this alternative did not become the preferred alternative as it appears to satisfy the project need with less impact of the environment.”

In sum, both of these agencies made three critical determinations:

- FERC has failed to demonstrate a complete analysis of alternatives in the FEIS
- Although the analysis of alternatives is incomplete, there appears to exist at least one less environmentally harmful alternative and in fact, the FERC has determined that this route is indeed less environmentally harmful
- FERC has failed to demonstrate a coherent rationale for approval of a less environmentally harmful alternative route

We could end the discussion of alternatives now since it appears that at least one alternative route that would be LESS harmful to coastal resources exists and others MAY exist. However, we will briefly review some alternative possibilities:

1. **The ELI system alternative.** This route that follows the existing Iroquois pipeline right-of-way onshore from Brookfield to Milford. Offshore of Milford, the pipeline would avoid most, if not all, nearshore shellfish beds by coming off a

subsea tap from the existing Iroquois pipeline. In addition, the ELI system alternative would impact 17.1 miles of Long Island Sound's seafloor compared to 22.6 miles for Islander East and would save 5.5 miles of Long Island Sound's seafloor. The ELI system alternative is a less environmentally damaging alternative to Islander East. Moreover, because excess capacity exists on the upland portion of Iroquois, the installation of pipeline in Connecticut uplands could be avoided completely; the only new pipeline that would need to be laid would be off the subsea tap and on the New York side. This solution would not only substantially decrease coastal resource destruction but it would be vastly less expensive, by \$50 million we are told; the lowered costs of pipeline construction would translate into future lower costs for Long Island ratepayers. This pipeline would still be able to transport gas to Long Island and New York energy markets.

In sum, this alternative is less harmful and less expensive.

- 2. Cross Bay Pipeline.** This pipeline received its Final Certificate from FERC in December 2001, had little opposition to its construction and would have transported gas directly onto Long Island from New Jersey to supply Long Island and New York City energy markets. However, it was abandoned because the investors deemed that the tariffs were too high. This appears to be a reasonable alternative that should be included in any alternatives analysis.
- 3. The Millennium Pipeline.** Although we know that this pipeline is also under appeal before NOAA, if New York is overruled and Millennium is built (which, for the record, we hope is not the case) we wonder if the gas that Millennium would deliver to the New York energy market would meet the demand that

KEDNY serves; at the very least, inclusion of Millennium, if it is built, should be included in a complete set of alternatives.

4. **Expansion of Existing Infrastructure.** There is presently existing infrastructure on Long Island and into New York City in which, through increasing capacity via added compression or increasing capacity via replacement with a larger diameter pipe, that demand on Long Island and into New York City could be met with no impact to coastal resources.
5. **Other cross-Sound and non-cross Sound routes.** Further exploration of both other cross-Sound and non-cross-Sound routes must be done by an objective third party – not connected with the corporate energy industry -- that can focus on regional energy planning. This entity should focus on the assessment of Northeast regional energy markets and should be empowered to “think outside the box” in order to devise the BEST solution for the Northeast region rather than the BEST solution (i.e. financially most profitable) for a particular energy corporation. The U.S. national interest can BEST be served when a complete analysis of alternatives to meet the Northeast’s region energy needs is devised and the least environmentally harmful and least expensive solution can be sensibly chosen. Please note that FERC has publicly stated that it is “not in the business of energy planning” (FERC’s Northeast Regional Conference, New York City, January 30, 2002.) Therefore, FERC’s decisions and certification practices do not take regional energy planning into account. Just because the present system is flawed should not be a reason for NOAA to accept the flawed and incomplete set of alternatives presented to you in this appeal.

6. Consideration of non-fossil fuel measures to meet demand on Long Island and in New York. There have been other documents/comments submitted to NOAA that define in greater detail alternatives to meeting Long Island's energy needs. These include but are not limited to: solar power, windmill turbines, fuel cells (which do use fossil fuel but in substantially smaller amounts), biomass, thermal exchange and, last but not least, conservation measures. Please note that during New York State's efforts to deregulate its energy markets in 1999, that considerable corporate and public incentives to conserve energy were stripped from revised state regulations. We would like to see New York State reinstate these incentive programs because there would likely be a subsequent decrease in energy demand on Long Island and in New York City.

In sum, there exists a list of potentially reasonable – and less expensive – alternatives. Moreover, a complete set of alternatives has never been developed for Islander East's project. Even so, there is definitely a reasonable alternative that is LESS damaging to our coastal resources and less costly -- the ELI system alternative -- as certified by FERC in the FEIS. An even less harmful alternative may become evident once, we hope, a complete analysis of alternatives is completed.

Therefore, Requirement (3) cannot be met.

SUMMARY: Since not one of the three Requirements could be met by Islander East's pipeline project, Islander East is not consistent with the objectives of the CZMA.

NATIONAL SECURITY

This is Ground II by which the Secretary of Commerce can overrule the CT DEP: that the project is necessary “in the interest of national security.”

Upon review of the documents received by NOAA for this appeal, we have noted the April 21, 2003 letter received from the Office of the Under Secretary of Defense, written by the Principal Assistant Deputy Under Secretary of Defense, Phillip W. Grone: “We have reviewed the appeal and cannot conclude that a national defense or other national security interest would be significantly impaired if the project were not permitted to go forward as proposed.”

We would also like to point out that public safety considerations are involved in the very existence of a high-pressure natural gas pipeline. First, there is a slight but very real risk of explosion from defects or human error. Second, in the fall of 2001, news reports circulated about Osama bin Laden’s intention to blow up a natural gas pipeline in the Northeast. This risk is also real, and it is difficult to determine how big or how small. However, given concerns about terrorism to ports and the high density of population that lives in the vicinity of the Islander East pipeline, the risk of terrorism exists today, especially for a natural gas pipeline in the northeastern United States that has received so much coverage in newspapers about its route. Additionally, a subsea line is much more vulnerable than a pipeline buried in the ground because the ease of access is increased.

Therefore, at worst, national security might be worsened by the installation of the Islander East pipeline, and at best, it is not a consideration in this appeal.

SUMMARY: Since Islander East cannot be deemed necessary in the interests of national security, and since Islander East is not consistent with the objectives of the CZMA, the decision of the CT DEP should not be overruled and Islander East's appeal should be denied.

II. Discussion of Other Factors Involved With this Appeal

1. This appeal is politically charged.

The CZMA was voted into law because the U.S. Congress recognized the value of our coastal resources and recognized that these resources need to have added protections to stop unnecessary, cavalier development. Presumably, the enforcement of the CZMA was placed into the hands of state agencies (in Connecticut's case, the Department of Environmental Protection) because there was recognition that the states knew best when it came to the value of their particular coastal resources.

So many people have participated in the opposition of this pipeline because they believe that their voices will make a difference. Please listen to them. As you can see from the preceding discussion, there can be only one decision to make: deny this appeal.

We are aware that Vice President Cheney's White House Task Force on Energy Project Streamlining has been involved by Islander East or possibly, by their co-investor companies, Duke Energy and KeySpan Energy; we know that this White House Administration has substantial interest in advancing the agendas of the corporate energy industry; in sum, there are considerable "politics" involved; we also know that there are

many people at the Department of Commerce who were appointed by this White House Administration and have histories with President Bush. We assume that all those appointed were done so because of their experience, expertise and overall excellence. We hope we can rely on these individuals to decide this case purely on the facts – and not the politics – because to do otherwise would not be the right thing.

We apologize if these statements offend, for that is not our intention. We recognize the harsh reality that in nearly any setting, politics can play a role.

1. *This may be the last opportunity to stop this project.*

If the Energy Bill, passed by the House and now before the Senate, is signed into law, the CZMA may be the last chance to stop this ill-conceived and environmentally devastating project. The power that you have now is considerable. You may be our last chance.

Have you ever loved a special place? Do you vacation there? Do you live there? Is it a scenic mountain range or a stretch of seashore or a quiet meadow? That's how we feel about the Thimble Islands. They are beautiful. They are special. They are unique. There is nothing like them in Long Island Sound. There is nothing like them in the Northeast, south of the beautiful islands of Maine. We love the Thimble Islands. We don't want this place to be degraded by a pipeline – especially when there is at least one alternative route that would have substantially less environmental impacts on the coastal resources of Connecticut and Long Island Sound.

We know that if the Energy Bill passes, that any recourse to provisions contained in the federal Clean Water Act to stop Islander East will be severely weakened. We will

not be able to use the Clean Water Act's 401 and 404 provisions to curtail this project. Moreover, if the Energy Bill passes, the CZMA will be the only provision FOR ANY COMMUNITY to stop a gas pipeline once it is certificated by FERC. As you are aware, FERC's process is flawed in that objective regional energy planning is not a factor and, most importantly, FERC is not REQUIRED to choose the least environmentally harmful alternative. That would leave the CZMA as the only substantive environmental stopgap to an environmentally poorly planned project, like Islander East. (Please note that we are NOT opposed to pipelines that are carefully planned and take the environment into careful consideration; however, the current route for Islander East is absolutely and unquestionably ill-conceived.)

How you decide this case will be precedent-setting and will factor in the way corporations decide to route FUTURE natural gas pipelines: if you can demonstrate that you will use your power to PROTECT our coastal resources, you will send a strong message that pipeline corporations need to take the CZMA seriously. Denying Islander East's appeal will help other coastal areas because pipeline corporations will plan more carefully and take the CZMA into serious consideration in their route design.

3. Islander East has mishandled community relations

When Islander East first presented their project in Branford in May 2001, about 100 people attended. We asked if we could have an open forum in order for Islander East's employees to answer our questions publicly. At that meeting, Islander East

refused. Later, after efforts from Branford's First Selectman, Islander East agreed to hold a public meeting.

At that meeting and ever since that time, over and over again, Islander East has not answered our questions or addressed our concerns. For example, when Islander East was asked during that first public meeting in July 2001 if they would be willing to take out a maintenance bond to cover the adjacent property for the lifetime of the pipeline (state statute requires a construction bond), Islander East would repeatedly state, "we will get back to you." That topic has been raised again and again since – and Islander East has never responded. However, in remarks made to government agencies, like the CT Siting Council, Islander East has stated on the record that they are "working with the community" and "responding to concerns." It has been irritating to read in print these misleading and patently false statements. Moreover, in numerous advertisements and in opinion pieces, Islander East has consistently stated information in misleading ways, omitted significant facts and conflated ideas. Essentially, Islander East has treated us as if we were ignorant and could be swayed by misinformation.

Obviously, that has not been the case. In fact, as of this writing, we have on the record most of Connecticut's key government leaders reporting their opposition to the construction of Islander East. This includes but is not limited to Governor John Rowland(R), Attorney General Blumenthal (D), our congressional federal delegation, most of our state General Assembly and the CT DEP. Obviously, this is not a partisan issue: all our leaders can see that Islander East is poorly planned and ill-conceived. We have thousands of private citizens voicing their opposition as well.

We write this to underscore that since Islander East has misrepresented the facts for so long and so consistently and since Islander East has refused to consider any alternatives, we do not trust Islander East. And we wonder – if Islander East so misjudged the response of our community and of Connecticut, how can you, NOAA, trust Islander East’s judgment that this particular route is the only one possible? How can you, NOAA, trust Islander East to responsibly and safely construct a pipeline? If Islander East has failed so miserably at community relations why should they be trusted to not fail miserably at constructing a pipeline – especially one with so many technical issues, such as the use of the HDD with an underwater exit-hole?

Moreover, as we learn more about Islander East’s two parent companies, Duke Energy and KeySpan Energy, we become even more alarmed. Material around Duke Energy’s missed deadlines and environmental damages on the Massachusetts’ HubLine have already presented to NOAA at the November 5 public hearing. As for KeySpan Energy, we came across a November 19, 2003 news article from the Tri-Town Transcript (see below) that describes a Massachusetts community’s concern about how KeySpan Energy has treated them. Note the final quote by Boxford’s First Selectman: “I have zero confidence in the credibility of KeySpan; I don’t trust them.”

Obviously, this is in a different state and about a different matter but it speaks to the lack of trust and experience of mistreatment that our community feels at the hands of Islander East.

Keyspan refuses to pay Boxford

By Colin Steele / CSTEEL@CNC.COM
Wednesday, November 19, 2003

Selectman: Board won't back down

The Boxford selectmen want to change how they deal with utility companies after Keyspan Energy denied their latest request to pay the town for police details.

The DiLorenzo Corp., a Keyspan subcontractor, ran up a \$10,000 bill during several projects last year. Keyspan paid DiLorenzo, who never in turn paid the police. The town ended up having to pay the police itself, and DiLorenzo went out of business. To avoid another problem, the selectmen want to require utility companies to pay all bills directly to the town.

"I don't think the board is going to back down on this one," Selectman Charles Costello said.

Last month the selectmen berated a Keyspan attorney, requesting he ask company higher-ups to reconsider their decision to not pay the town. Town Administrator Alan Benson has since spoken several times with the attorney, who reported no progress.

"Keyspan is not changing their stance on this," Benson said. "They feel that paying the bill twice is a double hit to their customers."

Several other towns face the same problem with Keyspan. Middleton, unlike Boxford, did manage to recover its money before DiLorenzo dissolved.

"We don't know exactly how that occurred," Benson said. "I guess maybe they jumped on it faster."

Costello suggested contacting the other towns to consider filing a class action suit against Keyspan. Company officials have said they do not have a legal obligation to pay the towns. In the meantime, Selectman Robert Was again tried to persuade board members to vote against all Keyspan permit applications until the issue is resolved.

"I have zero confidence in the credibility of Keyspan," Was said. "I don't trust them."

He doesn't want Keyspan to be able to make money in Boxford while it owes the town money, but the other selectmen believe they would unfairly punish residents who need gas service by rejecting the permits.

In sum, since Islander East has not been able to effectively manage its public relations, what confidence can NOAA place in Islander East to effectively manage the construction of a high pressure natural gas pipeline?

4. There is new information about the August 2003 Blackout.

As noted earlier in these comments, the preliminary reports of the cause of the August 14, 2003 Blackout rests with errors at a Midwestern power corporation. Please see AP Article below.

As detailed in the concerns above about Islander East's misleading use of information, the Blackout is an excellent example: Islander East has directly implied in advertisements and opinion pieces that its pipeline could have helped prevent the August 2003 Blackout; this is both inaccurate and unnecessary public fear-mongering.

May this AP article put to rest any further allegations of this kind and remove any consideration of the Blackout in this appeal.

Report Blames FirstEnergy for Massive Blackout

By H. JOSEF HEBERT, AP

(November 19) - The nation's worst blackout began with three power line failures in Ohio and should have been contained by operators at FirstEnergy Corp., a three-month government investigation concluded Wednesday. The report by a U.S.-Canadian task force said the FirstEnergy operators did not respond properly, allowing the Aug. 14 outage to cascade, eventually cutting off electricity to 50 million people in eight states and Canada.

The task force also cited outdated procedures and shortcomings at a regional grid monitoring center in Indiana that kept officials there from grasping the emerging danger and helping FirstEnergy deal with it.

"This blackout was largely preventable," Energy Secretary Spencer Abraham said.

The task force said it found "no computer viruses or any sort of illicit cyber activities" to blame. It also concluded that there was no deliberate damage or tampering with equipment associated with the outage.

Among the faults found at FirstEnergy, however, was a simple failure to keep trees around power lines trimmed.

FirstEnergy, the nation's fourth largest investor-owned utility company, had no immediate comment on the report. The company, based in Akron, Ohio, has maintained that its problems were but some of many in the Midwest power grid on the day of the blackout and that it should not be singled out.

The task force report cites the failure of a FirstEnergy line near Cleveland, follow by problems with two of its other lines, as the "initial events" of the blackout.

The loss of the three lines caused too much electricity to flow into nearby lines, causing an overload. Because those lines not prepared for the sudden increase in power, the system became unstable as the balance between available power and demand deteriorated, said the report.

It said the company's failure to adequately trim trees along the lines "was the common cause" for the lines tripping and said overall FirstEnergy "failed to ensure the security of its transmission system."

Abraham and Canadian Natural Resources Minister Herb Dhaliwal released the findings in the 134-page report on the causes for the blackout that spread across eight states, from eastern Michigan to New York City and into Canada.

It was the worst blackout in the nation's history, costing at least \$6 billion in economic and other losses. It prompted new calls for upgrading the nation's high-voltage electric transmission systems and giving the government power to enforce reliability standards.

Congress is expected this week to complete a massive energy bill that includes, for the first time, federal reliability rules for companies to follow to safeguard the grid system. Currently the industry regulates itself with no direct penalties for violations.

The report raises questions about the monitoring of the power grid by the Midwest Independent System Operator, or MISO, a group responsible for overseeing power flow across the upper Midwest.

The MISO operators, from a control center in Carmel, Ind., were using outdated information and didn't have the means to identify significant transmission problems developing in the system, said the report. That prevented MISO operators from assisting FirstEnergy control operators, who themselves were hampered by a faulty computer and other mechanical glitches.

The task force cited both human error and equipment failures, noting that FirstEnergy's ability to analyze its problems was hampered for nearly an hour and a half by a computer failure.

From the time the computer failed "to when they began to recognize their situations, (FirstEnergy) operators did not understand how much of their system was being lost" or that their interpretation of events did not reflect the system's true condition, the report said.

Abraham said of the hours before the blackout: "A number of relatively small problems combined to become a very big one."

The report found four violations of industry reliability standards by FirstEnergy and another violation by the Midwestern Independent System Operator. The industry is largely self regulating and such violations in themselves would carry no fines.

The FirstEnergy violations included not reacting to a power line failure within 30 minutes as required by the North American Electricity Reliability Council, not notifying nearby systems of the problems, failing to analyze what was going on and inadequate operator training.

The report said the MISO, the multi-state grid operator, did not notify other regions about the potential problems.

While the blackout was preventable, Abraham said "once the problem grew to a certain magnitude, nothing could have been done to prevent it from cascading out of control."

The report said the cascade began at 4:06 p.m. EDT when a FirstEnergy high-voltage line called Sammis-Star tripped.

"Within seven minutes the blackout rippled from the Akron area across much of the northeast United States and Canada," the report said. In those seven minutes more than 263 power plants went down.

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SUMMARY

- **Requirement (1) cannot be met: when the definitions of national interest are used from Sections 302 and 303 from the CZMA, there can be NO CASE that Islander East furthers the national interest. In fact, the CZMA appears to have been specifically designed to stop the type of ill-conceived and environmentally harmful project that Islander East represents. Moreover, the intent of Congress appears to hold the federal government to a higher standard of coastal protection than expected from the states.**
- **Requirement (2) cannot be met: Islander East's customer base on Long Island has decreased while the potential adverse coastal impacts remain permanent, severe and unchanged. The national interest of the United States will suffer from the permanent loss of these specific coastal resources; destroying these coastal resources for a capricious and ever-changing energy market makes little sense. Therefore, the national interest to protect these coastal resources vastly outweighs any national interest derived from moving gas to this variable and inconstant energy market. Furthermore, any national interest relating to reliability, Blackout prevention and cleaner air are**

specious and irrelevant arguments and should receive no consideration in this appeal.

- **Requirement (3) cannot be met: there exists a list of potentially reasonable – and less expensive – alternatives. Moreover, a complete set of alternatives has never been developed for Islander East’s project. Even so, there is definitely a reasonable alternative that is LESS damaging to our coastal resources and less costly -- the ELI system alternative -- as certified by FERC in the FEIS. An even less harmful alternative may become evident once, we hope, a complete analysis of alternatives is completed.**
- **National security might be worsened by the installation of the Islander East pipeline, and at best, according to the Department of Defense, is not a consideration in this appeal.**

CONCLUSION

As this extensive comment on the Islander East Pipeline Appeal has attempted to demonstrate, not even one of the three CZMA Requirements could be met by Islander East’s pipeline project; therefore, Islander East is not consistent with the objectives of the CZMA. Since Islander East cannot be deemed necessary in the interests of national security, this not a factor.

Therefore, the decision of the CT DEP should be upheld and Islander East’s appeal should be denied.

Thank you so much for the opportunity to provide public comment on this appeal. And thank you for taking the time to consider the issues presented in this comment. Please do not hesitate to contact me if I can provide any additional information.

Respectfully submitted,

Katherine Kennedy, M.D.

Spokesperson, CT Stop the Pipeline